

Magill (Migration) [2023] AATA 1357 (10 May 2023)

DECISION RECORD

DIVISION:	Migration & Refugee Division
REVIEW APPLICANT:	Mr John Vincent Magill
VISA APPLICANT:	Mrs Priyanka Mahajan
REPRESENTATIVE:	Mr Prakash Srinivasan (MARN: 0960121)
CASE NUMBER:	1927805
HOME AFFAIRS REFERENCE(S):	BCC2018/1399439
MEMBER:	M. Edgoose
DATE:	10 May 2023
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the application for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 309 visa: • cl 309.211 of Schedule 2 to the Regulations • cl 309.221 of Schedule 2 to the Regulations.

Statement made on 10 May 2023 at 9:07am

CATCHWORDS

MIGRATION – Partner (Provisional) (Class UF) visa – Subclass 309 (Partner (Provisional)) – genuine and continuing relationship – joint bank accounts – superannuation beneficiaries – child born of the relationship – joint lease agreements – decision under review remitted

LEGISLATION

Migration Act 1958, ss 5, 65, 360

Migration Regulations 1994, Schedule 2, cls 309.211, 309.221; r 1.15

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to refuse to grant the applicant a Partner (Provisional) (Class UF) visa under s 65 of the *Migration Act 1958* (Cth) (the Act). The applicant applied for the visa on 26 March 2018. The delegate refused to grant the visa on 13 August 2019.
2. The visa applicant applied for the visa on 26 March 2018 on the basis of her relationship with her sponsor, the review applicant. At that time, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.309.211 as the delegate was not satisfied and had serious concerns regarding the genuineness of your relationship and commitment to each other.
4. Since 2 October 2019 when the review applicant applied to this Tribunal to have the decision reviewed until this decision was made the couple have made numerous submissions to the Tribunal in support of their relationship. The evidence included evidence of joint bank accounts, joint utility bills, superannuation beneficiaries, photographs of the couple, with their baby and third parties, a copy of the birth certificate of their son, Viraj John Magill, born on 19 April 2020, multiple Form 888's Statutory Declarations in support of the relationship, joint lease agreements, employment details and legal submissions from their representative.
5. The Tribunal having considered all of this evidence is satisfied that the criterion is met and has concluded that the matter should be remitted for reconsideration.
6. Given the evidence submitted by the couple and their representative the Tribunal is satisfied that the review applicant and visa applicant meet the requirements of reg 1.15A(3). The evidence submitted includes evidence of the financial aspects of the relationship, the nature of the household, the social aspects of the relationship and the nature of the persons' commitment to each other.
7. The Tribunal is therefore satisfied that the couple meet the requirements of s 5F of the Migration Act.
8. In reaching its decision the Tribunal did not consider a hearing to be necessary, as it was able to find in favour of the applicant based on the material before it, pursuant to s 360(2)(a) of the Act.

DECISION

9. The Tribunal remits the application for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 309 visa:
 - cl 309.211 of Schedule 2 to the Regulations
 - cl 309.221 of Schedule 2 to the Regulations.

M. Edgoose
Member